

## EXHIBIT J

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: June 9, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the June 9, 2020  
2 Case Management Conference (CMC).

3 Since the last CMC, the parties have met and conferred regarding certain aspects of  
4 Defendants' response to the current health crisis. On Monday, June 1, Plaintiffs sent  
5 Defendants an email, with a copy to the Receiver, requesting "a meet and confer this week  
6 on the following topics with the people identified below and anyone else whom you or [the  
7 Receiver] believe would be helpful to our discussions." 1) Testing CDCR and CCHCS  
8 staff for COVID-19; 2) Moving high risk patients from cells to dorms; and 3) "Steps  
9 necessary to improve the safety of people living in cells and dorms, especially high risk  
10 people living in congregate living areas." The email did not contain any specific proposals  
11 with respect to the topics listed therein.

12 On Wednesday, June 3, at 3:16 p.m., Plaintiffs emailed Defendants, again copying  
13 the Receiver. In that email Plaintiffs wrote that "[i]n order to make the Meet and Confer  
14 scheduled for Friday as productive as possible in the attached document we have set forth  
15 our proposals on the three subjects we outlined below [in the June 1, email]." Plaintiffs  
16 attached a two paged single-spaced document entitled "Plaintiffs Proposals For June 5,  
17 2020 Meet and Confer." That document set forth Plaintiffs positions and demands on  
18 "testing staff" and "steps necessary to improve the safety of people living in cells and  
19 dorms, and especially high risk people living in congregate living areas."

20 On Friday, June 5, the parties had a conference call that lasted more than one and a  
21 half hours. Approximately 20 people participated in the conference call, including the  
22 Receiver and members of his staff, CDCR Division of Adult Institutions staff, CDCR  
23 Employee Health and Wellness staff and lawyers from the Prison Law Office, the Attorney  
24 General's office, Hanson Bridgett, and CDCR's Office of Legal Affairs to discuss the  
25 proposals. With the exception of what is described below, no agreements were reached.  
26 This was due in part to the short time frame that Defendants had to respond to the  
27 document, the number of people on the call and because the Defendants are evaluating  
28

1 nor could the Receiver say when a decision would be reached.

2 **Plaintiffs' Position:**

3 It is the opinion of Dr. Arthur Reingold that cells are safer for the medically  
4 vulnerable patients than dormitories, and that those medically vulnerable people who have  
5 tested negative should be moved out of prisons where there are outbreaks.

6 This issue has been pending for three months, yet despite Dr. Reingold's  
7 uncontradicted expert opinion, thousands of high-risk patients remain in dormitories  
8 throughout the state. During the meet and confer session, the Receiver announced that this  
9 issue was a top priority and he was now considering the appropriateness of moves from  
10 dorms to cells. Plaintiffs urge the Receiver and Defendants to take action to safely rehouse  
11 these people as soon as possible.<sup>3</sup>

12 In addition to Dr. Reingold's opinion, dorms are plainly the locus of the largest,  
13 most widespread, and serious outbreaks. In one Avenal dorm, more than 90% of patients  
14 tested positive. At Chuckawalla Valley, which houses nearly 3,000 people, all in dorms,  
15 hundreds had been tested and CCHCS last week said the positive rate was approximately  
16 75%. By contrast, the outbreaks in celled housing at Lancaster and CMC, while  
17 concerning, were stopped before they extended nearly as widely and appear to be  
18 contained. Lancaster has had 128 cases, but only one is currently active; CMC has had 11  
19 cases, but only one is currently active. With regard to morbidity and mortality, almost all  
20 of the approximately 50 people currently hospitalized statewide due to COVID-19 were  
21 infected while living in dorms, and the same is true of the dozen patients who have died  
22 thus far. Dorms present an unacceptable risk of infection and harm under current  
23 conditions.

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25 <sup>3</sup> In order to more precisely ascertain the extent of the risk, Plaintiffs have asked for and  
26 the Receiver's office stated that it will provide a list of all people incarcerated in CDCR  
27 who have one or more risk factors for complications from COVID-19, along with the  
28 number of such factors for each person, and whether the person is housed in a cell or a  
dorm.

1 CCHCS had a plan to move almost 700 medically high risk patients who had tested  
 2 negative for the virus from California Institution for Men (CIM) to other prisons. Those  
 3 transfers began on or around May 29<sup>th</sup>. The patients who were transferred had tested  
 4 negative, but in many cases the tests were done *two to three weeks before the transfer*. Not  
 5 surprisingly, some of those people tested positive shortly after their arrival at the new  
 6 prisons. As a result, the process was suspended after the first 125 transfers<sup>4</sup>. CCHCS is  
 7 now reconsidering its testing strategy for transfers, including of the medically vulnerable.<sup>5</sup>  
 8 Plaintiffs have requested to review the proposed revised testing protocols before they are  
 9 finalized.

10 At the meet and confer, the Receiver raised concerns that some people who are high  
 11 risk may prefer not to transfer from a dorm to a cell, and asked Plaintiffs what such  
 12 patients should be told, and what should be done. Plaintiffs now propose the following  
 13 approach: a high risk patient living in a congregate area who has recently tested negative  
 14 may refuse a transfer to a celled housing unit, unless the Receiver or his medical staff  
 15 determines that the patient's continued presence in that congregate living area would be a  
 16 public health threat. Before the patient is asked to make a decision, the patient must  
 17 receive meaningful education from a Primary Care Provider on the medical risks of staying  
 18 in his/her present congregate living space and potential medical benefits of being  
 19 transferred to another location, and an opportunity to have any questions answered.

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 22 <sup>4</sup> On May 22, a week before the first transfer, Plaintiffs asked the Receiver's office to  
 23 consider whether certain practices regarding the housing of CIM patients who had tested  
 24 positive with those who tested negative created a risk of infection for the latter group and  
 for others if any members of that group became infected and were then transferred.

25 <sup>5</sup> On June 2<sup>nd</sup>, after the date of many of 125 transfers from CIM, CCHCS published clinical  
 26 guidelines stating that those who transfer "may be tested within a week prior to transfer or  
 27 upon arrival." *COVID-19: Interim Guidance for Health Care and Public Health*  
 28 *Providers*, at <https://cchcs.ca.gov/covid-19-interim-guidance/>. Plaintiffs do not know why  
 this standard was not applied to the CIM patients discussed above, although we note that as  
 posted it is discretionary not mandatory.

1           **Defendants' Position:**

2           As reported last week, on May 26, the Receiver notified CDCR that 691 high-risk  
3 inmates at Correctional Institution for Men (CIM) tested negative for COVID-19 and  
4 should be transferred out of CIM. CDCR immediately began the process of evaluating this  
5 group of inmates to determine whether they should be excluded from transfers based on  
6 factors such as display of COVID-19 related symptoms, their overall medical or mental  
7 health condition, pending appointments, or upcoming release within the next ten days.  
8 Between May 28 and May 30, 194 inmates on the Receiver's list were moved out of CIM  
9 to Corcoran and San Quentin. All inmates tested negative for COVID-19 before their  
10 transfers out of CIM. Transfers of approximately 125 more inmates out of CIM were  
11 planned for June 4 and 5. But the Receiver ordered the suspension of all transfers from  
12 CIM on June 4 after it was discovered that some of the inmates who transferred out of  
13 CIM tested positive when they arrived at their destinations. To date, sixteen of the  
14 transferred inmates have tested positive. Unfortunately, San Quentin, which was  
15 previously a COVID-free prison, now has COVID-positive inmates. San Quentin is taking  
16 a number of measures to prevent spread of COVID-19 from these inmates, including  
17 placing all inmates transferred from CIM in quarantine or isolation, and strictly limiting  
18 their movement and exposure to other inmates and staff.

19           CDCR is prepared to work with the Receiver once he has determined an approach  
20 for housing medically high-risk patients.

21           **III. ESTABLISHING AND ENFORCING WORKABLE DISTANCING PROTOCOLS AT**  
22           **CDCR'S INSTITUTIONS**

23           Plaintiffs' proposal to improve the safety of people living in cells and dorms included  
24 two elements: (1) establish and enforce workable distancing protocols for all incarcerated  
25 people; and (2) create livable dorms and gyms.

26           Specifically, Plaintiffs recommended people be assigned to cohorts for yard, chow  
27 hall, showers, and dayroom, and staff be assigned to working with a particular cohort to  
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1 California Institution for Women and California Health Care Facility.

2 **VII. OTHER UPDATES**

3 **Defendants' Position:**

4 During Nurses Week in mid-May, CDCR and CCHCS honored and celebrated their  
5 hard working nurses by providing food and giving out COVID-19 prizes (such as toilet  
6 paper, disinfectant and paper towels) as well as gift cards while complying with social  
7 distancing practices. Photos and more details can be found at  
8 [https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-](https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-nurses/)  
9 [nurses/](https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-nurses/).

10 On June 5, Wardens and Chief Executives Officers from across the State participated  
11 in a discussion titled "Lessons Learned the First 90 days" where leadership who have  
12 experienced COVID outbreaks at California Institution for Women, California Men's  
13 Colony, and California Institution for Men candidly shared advice and strategies that  
14 greatly assisted their staff during these recent outbreaks.

15  
16 DATED: June 8, 2020

PRISON LAW OFFICE

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20 Attorney for Plaintiffs  
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1 DATED: June 8, 2020

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